IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 1977 of 2006

Date of decision: 04.12.2006

Parminder Singh @ Pappu

..... Petitioner.

Versus

Ved Parkash Gupta

..... Respondent.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. Vivek Suri, Advocate
for the petitioner.

Mr. P.S. Rana ,Advocate
for the respondent.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed for setting aside the order dated 28.02.2006 passed by learned Civil Judge (Senior Division), Patiala.

The learned trial Court found that the decree for recovery of Rs.3.60 lacs could not be executed except by coercive method. It is therefore warrants of arrest of the judgment debtor were ordered to be issued. Leaned counsel for the petitioner has contended that before issuing warrants of arrest no notice had been specifically issued to the judgment debtor as is envisaged under Order 21 Rule 37 and Order 21 Rule 40 of the Code of Civil Procedure.

I have however find no merit in this submission. The order of the learned Civil Judge records the proceedings which had already taken place in the application for execution of decree prior to the passing of this order which reads as under:-

"Earlier, the warrant of attachment were to be issued and the warrant of attachment were not issued for want of list of property. Counsel for the decree holder moved this application under Order 21 rule 30 CPC. The respondent appeared but no objection was filed. Subsequently, respondent was proceeded against ex-parte and warrant of arrest of the judgment debtor were ordered to be issued vide order dated 1.2.2003 passed by the then learned Civil Judge (Senior Division), Patiala. Accordingly, the judgment debtor Parminder Singh was produced before the Court in compliance with the conditional warrant of arrest. The decree holder and judgment debtor made joint statement that the matter is being compromised and the judgment debtor requested for time to make payment. Accordingly, vide order dated 13.11.2003, the judgment debtor was released from the custody but thereafter the judgment has not made payment and has contested this application by filing written reply.

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The matter can be examined from another angle also. In this application the decree holder has alleged that he is unable to locate property of the judgment debtor for attachment. In reply, the judgment debtor has also not disclosed any property. He has rather admitted that he is not having any movable or immovable property. The only ground for contesting this application by the judgment debtor is that the decree holder has

> no right to seek civil imprisonment for more than one month under law and the request of the decree holder to send the judgment debtor for imprisonment of three months is unreasonable. It is not asserted by the judgment debtor also that the decree holder cannot seek civil imprisonment of the judgment debtor. In such circumstances, no further enquiry was required in the matter."

I am of the opinion that earlier notice was served upon the judgment debtor. He had appeared but did not file objection. Thereafter he was proceeded ex-parte. His warrant of arrest was ordered to be issued vide order dated 01.02.2003. He was produced in Court. After appearing he stated that the matter is being compromised and requested for time to make payment. He was released from custody but yet did not make payment. I therefore find that sufficient opportunities had already been given to the judgment debtor and no further opportunity was warranted in the facts of this case.

Notwithstanding this and realizing that the judgment debtor should be committed to civil imprisonment as a last resort I did grant time to the counsel for the petitioner to appear in court with some money towards part payment of the decree and to settle for repayment of the entire amount. For this purpose following order was passed on 23.10.2006:-

> "Learned counsel for the petitioner states that his client would appear in the Court on the next date of hearing along with some money to be paid to the respondent."

On 02.11.2006 learned counsel for the petitioner made a statement that he may be granted one more opportunity to convince his

client to discharge his liability and according the following order was passed:-

> "Learned counsel for the petitioner states that he may be granted one more opportunity to convince his client to discharge the liability."

Thereafter on 16.11.2006 yet another adjournment was requested and the following order was passed:

> "Learned counsel for the petitioner seeks yet another adjournment to make an effort to convince his client to pay some amount in lump sum."

On 21.11.2006 assurance was given to the Court that the judgment debtor would come with a draft/pay order for a sum of Rs.1.5 lacs and would negotiate for re-payment of balance amount and on this basis the following order was passed on that day:-

> "Learned counsel for the petitioner state that if the case is taken up in the first week of December, his client would come ready with a draft/pay order for a sum of Rs.1.5 lacs towards part payment of the outstanding amount and also negotiate for repayment of balance amount with the respondent."

Today again neither the petitioner has appeared nor any money has brought by his counsel. Rather learned counsel for the petitioner has stated that the matter may be decided on merits as his client is not responding to the request of counsel to make the payment . It is therefore that I had no option but to decide the revision on merits.

For the reasons aforementioned the revision petition is dismissed.

December 04 , 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**